

WHAT WE HEARD

Regarding Yukon's *Act to Amend the Oil and Gas Act*

OVERVIEW DOCUMENT of
CONSULTATION SUBMISSIONS

Fall 2009

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1. INTRODUCTION

The purpose of this document is to report back to the public on the comments received by the Department of Energy, Mines and Resources (EMR) during consultation on proposed amendments to Yukon's *Oil and Gas Act*. Consultation took place from late July until September 14, 2009 and involved correspondence, discussions and meetings with First Nations, industry representatives, conservation groups and interested members of the public.

This document provides an overview of consultation submissions as an alternative to the full text versions, which are available to the public at www.yukonoilandgas.com. In addition, EMR staff have provided supplemental information and responses regarding amendments based on comments submitted. Should you have questions regarding the amendments or the consultation, you can contact Oil and Gas Resources (OGR) through the information provided on page 16.

2. BACKGROUND

The Yukon *Oil and Gas Act* was enacted in 1997, and the transfer of responsibility from Canada to Yukon for the management of oil and gas resources occurred in November 1998. The Yukon government has developed a suite of regulations under the act to manage the resource and industry.

Since the implementation of the act over ten years ago, the Yukon government has kept track of a number of updates needed for the act. The updates include:

- modernization to reflect current industry practices and operations in Canada;
- removal of provisions that are no longer applicable due to the passing of prescribed time periods or the completion of requirements;
- aligning Yukon's oil and gas legislation with common law provisions for consultation with First Nations; and,
- new provisions to allow for the development of additional regulations to manage the emerging Yukon oil and gas industry sector.

The current amendment process will address these needed updates.

3. CONSULTATION

The period for public consultation on the proposed amendments to Yukon's *Oil and Gas Act* began on July 29, 2009 and concluded September 14, 2009. In recognition of government-to-government relationships with Yukon First Nations, the government accepted submissions from Yukon First Nations after the close of public consultation.

OGR directly contacted First Nation governments and identified stakeholders to notify them of the proposed amendments and consultation period, as well as notified the public through advertising and a news release.

To assist with public review, the government provided two documents to those interested. The Summary Document for Review and Consultation provided an overview of the proposed amendments and information on the amendment and public review process. The government also prepared proposed text for an *Act to Amend the Oil and Gas Act*; the Act to Amend being the vehicle for changing the *Oil and Gas Act* in the legislative process. Both of these documents were provided to identified stakeholders and were available to the public through OGR's website, or upon request.

In addition, meetings to discuss the proposed amendments were arranged as requested by those interested. During consultation there was correspondence, discussions and meetings with First Nations, industry representatives, conservation groups and interested members of the public.

The government encouraged all of those interested in the proposed amendments to submit written comments during the consultation period. All written comments submitted during the consultation period have been digitally reproduced and are available on the OGR website www.yukonoilandgas.com. In addition, this document provides an overview of the comments received as an alternative to the full text submissions.

The government thanks all those who submitted comments during the public consultation period. Public input continues to be a valuable and important step in amending legislation. All comments were carefully reviewed prior to the final drafting of legislation. For more information on the next steps of the amendment process, please see page 16.

4. WHAT WE HEARD

This section provides an overview of written comments submitted to the Government of Yukon during the consultation period. Digital copies of the complete submissions can be viewed and downloaded at www.yukonoilandgas.com, along with copies of the consultation documents.

Comments are grouped by theme and are accompanied by an example quote from one of the interested parties. In addition, EMR has provided supplemental information and responses regarding amendments based on comments submitted.

Consultation

The Government of Yukon received several comments from First Nation governments, and public respondents on the timing and length of the consultation period. Several respondents requested an extension for the submission of comments.

“We feel that the consultation period should be extended to allow Yukon First Nations time to respond to the proposed changes. As you know the consultation period occurred during the summer and early fall, which is not a convenient time of year for First Nations.”
Council of Yukon First Nations.

A number of First Nations asserted the role of the Memorandum of Agreement (MOA) on Oil and Gas Working Group in the reviewing and drafting of the original *Oil and Gas Act*, as well as the ongoing development of Yukon’s common oil and gas regime. The MOA was signed in 1997, and the Working Group consists of First Nation and Yukon government representatives. Additionally, several First Nations recommended that

“the final drafting of the proposed amendments be reviewed by the MOA working group. This would be consistent with the process employed to develop the Act and its regulations.”
Ta’an Kwäch’än Council.

There was some concern expressed by First Nations on the manner in which the Yukon government engaged First Nations during consultation on the proposed amendments.

“[The Yukon Government] should have raised the matter with the Yukon First Nations on a government-to-government basis, especially in light of its wanting to amend the act contrary to its commitment set out in the MOA.” Carcross/Tagish First Nation.

In addition, two comments were received regarding public outreach during consultation, with one suggesting that government should

“hold information and discussion sessions for the public in Whitehorse and the communities, so that questions on the particulars of this complex topic can be answered without the public having to resort to booking meetings with your Department.”

Gill Cracknell & Jannik Schou, Whitehorse.

Energy, Mines and Resources

Public consultation began on July 29, 2009 and concluded September 14, 2009. Public notice of the consultation was provided through advertising, a news release, and posting on the Yukon government website.

In addition, the Oil and Gas Resources Branch directly contacted First Nation governments and identified stakeholders to notify them of the proposed amendments and consultation period. Consultation documents were included with this correspondence, and on the main consultation webpage.

During consultation there was correspondence, discussions and meetings with First Nations, industry representatives, conservation groups and interested members of the public.

In recognition of government-to-government relationships with Yukon First Nations, the government accepted submissions from Yukon First Nations and the MOA Working Group through to October 15th.

The Yukon government continues to participate in the MOA Working Group as part of our efforts to jointly develop a common onshore oil and gas regime for Yukon oil and gas lands and First Nation lands.

Support for proposed amendments

The oil and gas industry voiced support for the proposed amendments and viewed them as indicative of Yukon's desire to increase investment and realize our resource potential. In its submission, the Canadian Association of Petroleum Producers stated that it was

“supportive of the measures being proposed...we believe the present effort to ensure that the Oil and Gas Act is aligned with current industry practices and the Yukon's broader evolving regulatory framework is an important step.”

Canadian Association of Petroleum Producers.

Similarly, a local conservation organization stated it was supportive of some of the proposed amendments, specifically sections 20 and 50 which would lead to government and public knowledge of interests in licenses and continued liability for activities under license following transfers through out the time of the license.

“We support the idea of knowing who holds interests in licenses in order to ensure accountability. YCS supports the idea of continuing liability following a transfer.” Yukon Conservation Society

On the broader issue of common oil and gas legislation for both Yukon oil and gas lands and First Nation lands, the government received support from industry for its *“efforts to develop and maintain a common oil and gas regime.”*

Energy, Mines and Resources

These amendments are important for the continued improvement of the legislative framework that manages Yukon's oil and gas sector. A stable framework provides for the needs of industry while maintaining government's ability to responsibly manage resources and provide Yukoners with the benefits of development. Changes to the act reinforce government management goals, facilitate new opportunities and increase the operating requirements to which industry must adhere.

Section 1 Interpretation

Comments were received on proposed changes to the definitions of words used within the *Oil and Gas Act*. One respondent requested that

“the amended definition of ‘working interest’ to include a mention of First Nations’ subsurface ownership rights on Category A settlement lands.” Yukon River Inter-Tribal Watershed Council.

Two submissions referenced the proposed amendment to the definition of “pipeline,” specifically regarding the transport of “any other substance intended to be used for a purpose related to an oil and gas activity.”

“The Whitehorse chapter of the Council of Canadians is concerned the current wording of the definition of pipeline in the Oil and Gas Act could allow for the transport of water.” Council of Canadians, Whitehorse Chapter.

Further, one of the respondents noted that the definition of “pipeline” was unclear as the term was used both as a stand alone term as defined in the act and as a term under definition of an oil and gas facility.

Energy, Mines and Resources

Regarding the definition of “working interest,” the *Oil and Gas Act* only applies to lands under the jurisdiction of the Yukon government, and therefore not First Nation Category A settlement lands. The amended definition of working interest is based on industry standards and includes holders or owners of rights and of oil and gas facilities.

Regarding the definition of pipeline and the possibility for it to allow the transporting of water, the amended definition of pipeline clearly states that any substance transported in a pipeline is intended for oil and gas activities. While water is a substance that is often co-mingled with extracted petroleum resources and is transported regularly in pipelines, there is no intent or ability to use the proposed amendment to transport and commercially sell water.

The term pipeline is included in the definition of “oil and gas facility” to enable smaller pipelines directly associated with an oil and gas facility to be licensed with the facility rather than as a stand-alone pipeline.

Section 13 Consent of Yukon First Nations

A number of First Nations, as well as two other respondents, stated they had concerns with the proposed repeal of Section 13. Of these, several respondents voiced objection to the repeal of Section 13.

“[The] Yukon Government wants to completely remove this section, and therefore remove their legal obligation to obtain consent... White River First Nation does not and will not agree to such an amendment to the YTG Oil and Gas Act.” White River First Nation.

Further, almost all First Nations were concerned that repealing Section 13 would

“seriously breach the intention of a memorandum of agreement signed in 1997 regarding oil and gas development in the territories of unsettle[d] Yukon First Nations.” Teslin Tlingit Council.

Energy, Mines and Resources

The act was written at a time when many Yukon First Nations were without a Final Agreement, but great progress was being made and there was anticipation of reaching final agreements with all 14 Yukon First Nations. Today most (11 of 14) First Nations within Yukon have settled land claims and proposed updates to the act bring it into line with common law for First Nation consultation.

This amendment to the act will facilitate new exploration and development in the southeast. If new production results, it will provide a source of revenue to government and Yukon First Nations with final agreements. First Nations located in the southeast and all Yukoners will benefit from the resulting economic opportunities through the negotiation of industry Benefits Agreements on training, employment and business opportunities required under the act. This amendment is consistent with other industries in areas of Yukon without Final Agreements in place.

The Government of Yukon continues to work on opportunities with First Nations in southeast Yukon and will continue to consult in accordance with common law and government policy with all First Nations on oil and gas activity within their traditional territories.

Section 66 Financial responsibility

One respondent was concerned with proposed changes to Section 66 that would allow for the suspension of activities until financial assurances are received when sought by the Minister.

“This makes it seem like the law is strengthened, when in reality, the existing law suspends or terminates the license itself, whereas the proposed change would merely suspend or terminate the activity authorized by the license.” Yukon Conservation Society.

Energy, Mines and Resources

Amendments to Section 66 relate to financial responsibility where the Minister seeks financial assurances that the licensee is able to carry out the activity. Changes are needed to provide the government with an option to suspend oil and gas activities, rather than cancel their licenses. This is important because as long as the license remains in effect, there is a licensee against whom sanctions can be imposed.

Section 67 Environmental assessments

Four respondents opposed the proposal to remove Section 67. This is proposed as it is no longer applicable as it refers to the *Canadian Environmental Assessment Act (CEAA)* which no longer applies in Yukon, having been replaced by the *Yukon Environmental and Socio-economic Assessment Act (YESAA)*.

“DUC recommends that rather than repealing section 67 that the section be updated and changed from the Canadian Environmental Assessment Act to Yukon Environmental and Socio-economic Assessment Act.” Ducks Unlimited.

Energy, Mines and Resources

The government is repealing Section 67 as it refers to the *Canadian Environmental Assessment Act*, which no longer applies in Yukon. Environmental assessments of oil and gas activities are now carried out in accordance with the *Yukon Environmental and Socio-economic Assessment Act*.

This amendment does not reduce or affect the current requirements for environmental safeguards and processes with respect to oil and gas activity. In fact, YESAA legislation enhances the assessment process because it requires a socio-economic assessment, something that CEAA did not require.

The review of industry activities under YESAA continues to allow for meaningful input from the public. EMR encourages those interested to participate during the YESAA review of individual applications for oil and gas activities.

Section 69 Land surface access & Section 70 Acquisition of land

We received comments on proposed amendments to this section that deals with the access to land for purposes related to acquiring land under Section 70. Concerns were raised that the right granted under this section was placing oil and gas interests above the rights of land owners.

“The oil and gas industry should not be given rights to Yukon lands which places oil and gas interests above those of other land interests and owners.” Gill Cracknell & Jannik Schou, Whitehorse.

Further, two respondents asked for clarification on what is meant by the terms “examinations of land” and what activities are allowable under this term.

Similarly, concerns were raised by a few respondents on proposed changes to Section 70, amendments to refer to the acquisition of lands for all oil and gas activities.

“[This section] assumes that oil and gas activity is the best use of land and does not afford property owners or other users of land the right to participate in determining what happens on their land.”
Yukon Conservation Society.

Energy, Mines and Resources

The proposed amendments to Sections 69 and 70 provide private land owners with greater protection of their surface rights than they currently hold. Presently, the act grants companies holding subsurface oil and gas rights the statutory right to access land for the purposes of carrying out oil and gas activities.

The amendment to section 69 confers this right of access only for the purpose of surveying or otherwise examining the land for possible future oil and gas facilities. Other types of examination may include activities such as gathering information about wildlife habitat, vegetation types, or the presence of streams and wetlands. The amendment authorizes future regulations that will outline the conditions that a company must meet prior to exercising this right.

The amendment to section 70 also states that companies would not have the statutory right to use the land, but would be required to negotiate that right with the surface rights holder. If negotiations fail, the proposed amendments would allow a company to apply for expropriation of land as a last step.

EMR expects companies to explore all possible options for negotiating surface access prior to making an application for expropriation. The amendment authorizes future regulations to govern the expropriation application process.

The proposed amendments are consistent with comparable legislation in other Canadian jurisdictions and with the Umbrella Final Agreement.

Other issues raised during the consultation period.

Section 68 Benefits agreements

Section 68 governs benefits agreements between industry, First Nations and Yukon. These agreements provide the Yukon public and the First Nations whose traditional territory the oil and gas activity is in with economic benefits such as training, employment and business opportunities.

Although Section 68 is not proposed to be amended, several First Nations and the Council of Yukon First Nations expressed the desire to examine the effectiveness of benefit agreements to determine if future amendments to this section were warranted.

“It is the Kluane First Nation’s recommendation that the MOA working group examine the outcomes of the benefit agreements implemented over the past decade in order to determine if the act or policies require revision.” Kluane First Nation.

Energy, Mines and Resources

The Oil and Gas Resources Branch plans to engage the First Nation MOA Working Group in discussions about benefit agreements in the immediate future. If the Working Group and Yukon government recommend that changes should be made to Section 68 of the *Oil and Gas Act*, changes could be included in a future amendment process.

Oil and gas activities and land use planning

We heard from three respondents about the importance of land use planning with regards to oil and gas activities.

“The Yukon Government has committed to regional land use planning and invested significant resources into the process; therefore, DUC recommends that the Oil and Gas Act should acknowledge and consider Oil and Gas activities within the context of regional land use planning.” Ducks Unlimited.

Energy, Mines and Resources

Energy, Mines and Resources continues to support and participate in regional land use planning processes. In addition, consultations during the disposition process, regulatory approvals and environmental assessments of oil and gas activities provide consideration of multiple land use activities.

Oil and gas availability to Yukoners

One respondent wrote that

“Yukon’s oil and gas resources should be made available to Yukoners instead of being exported and associated benefits should be maximized within the Yukon.” Kluane First Nation.

Energy, Mines and Resources

The Yukon government identified its support for the local use of Yukon’s oil and gas resources in the Energy Strategy for Yukon.

Currently, the infrastructure is not in place, nor are Yukon’s oil and gas resources developed to a point where it is feasible to supply Yukoners. Presently, the only producing wells in Yukon are located in the far southeast of Yukon and these wells are coming to the end of their productive life.

However, OGR currently negotiates benefit agreements with First Nations and industry so that all Yukoners benefit from oil and gas activities. These agreements provide the First Nations whose traditional territory the oil and gas activity is in, and the Yukon public with economic benefits such as training, employment and business opportunities.

In addition, Yukon will realize benefits in the long term from the collection of royalties and taxes gained through oil and gas activities.

Coal bed methane and natural gas from coal

Two respondents spoke about the act as it related to natural gas from coal.

“The Oil and Gas Act legislation should explicitly state that it does not refer to or include activities related to coal bed methane exploration and development.” Yukon Conservation Society.

“environmental impacts associated with [natural gas from coal] require adequate government legislation before development is permitted in the Territory.” Yukon River Inter-Tribal Watershed Council.

Energy, Mines and Resources

The Energy Strategy for Yukon identified the need to conduct a detailed assessment of Yukon’s energy options, including coal bed methane. While the development of coal bed methane is not a government priority, this assessment will be used to develop a policy framework for our energy options. This policy and any changes to legislation involving the development of natural gas from coal will include consultation with Yukoners prior to resource development.

Tracking of greenhouse gas emissions

One respondent requested that the act be amended to state that

“companies and individuals involved in oil and gas exploration and extraction must track and report information in greenhouse gas emissions from all operations.” Yukon Conservation Society.

Energy, Mines and Resources

The Yukon government made a number of commitments to reduce greenhouse gas emissions in the *Climate Change Action Plan*. Two of the eleven initiatives outlined in the Action Plan include developing a Climate Registry to track greenhouse gas emissions and developing best management practices for industry to reduce greenhouse gas emissions.

5. NEXT STEPS

All submissions were reviewed and carefully considered before the proposed amendments were finalized. The proposed amendments will continue through the legislative process in the form of an *Act to Amend the Oil and Gas Act* (Act to Amend). It is expected that the Act to Amend will come before the legislature during the Fall 2009 sitting. Should it be approved by the legislature, the amendments will take effect as defined within the Act to Amend or on a date specified by the legislature. Enactment of the amendments will conclude this revision process of the *Yukon Oil and Gas Act*.

6. HOW TO CONTACT OIL AND GAS RESOURCES:

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